IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3692 of 2001
with
FIRST APPEAL No. 3694 of 2001
To
FIRST APPEAL No. 3699 of 2001

For Approval and Signature:
HONOURABLE MR.JUSTICE RAJESH H.SHUKLA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER & 1
Versus
UJIBEN WD/O DHANJIBHAI PATEL

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Appearance :
SHRI RONAK RAVAL, AGP for Appellant(s) : 1 - 2.
SHRI JAYESH PATEL for SHRI A.J.PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAJESH H.SHUKLA

Date : 1/05/2012

COMMON ORAL JUDGMENT

1. The present First Appeals have been filed by the Appellants – State – Original Opponents being aggrieved with the impugned

judgment and order rendered by the learned 2nd Joint Civil Judge (SD), Mehsana in Land Acquisition Reference Case Nos. 844 of 1998 to 850 of 1998 and 3 of 2000 dated 30.9.2000 on the grounds stated in the memo of Appeal.

2. The facts of the case briefly stated are that the lands of the Respondent – Original Claimant situated at village Manipur, Taluka Kadi had been acquired for Narmada Project. The Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as "the Act") was published on 15.3.1991 and the Notification under Section 6 of the Act was published on 5.12.1991. The Land Acquisition Officer after completing the procedure declared the award dated 26.11.1993 awarding Rs.3/- per sq. meter against the demand of Rs.30/- by the claimants. Therefore, the Respondents – Original Claimants preferred the Reference under Section 18 of the Act, which came to be decided by the Reference Court, which has awarded Rs.25/- per sq. meter by way of additional compensation by the impugned judgment and order dated 30.9.2000. It is this judgment and order of the Reference Court, which has been assailed by the Appellants in the present First Appeals on the ground that the Reference Court ought to have considered that the award passed by the Land Acquisition Officer is after considering the potentiality, fertility and other relevant aspects, and therefore, the Reference Court ought not to have passed the award for the additional compensation. It is also contended

that the Reference Court ought to have considered the deposition of witnesses, including the witness of Deputy Engineer, Kadi at Exh.23. He stated that the Land Acquisition Officer has placed reliance on the sale price of the land of the surrounding area, for which, the registered sale deed has also been referred and the annual yield of the land etc. have been considered. Therefore, the compensation by the Land Acquisition Officer is just and proper.

3. Heard learned AGP Shri Ronak Raval for the Appellants and learned Advocate Shri Jayesh Patel for the Respondents – Original Claimants.

4. Learned AGP Shri Ronak Raval for the Appellants submitted that the Reference Court has made the award without considered the relevant material and evidence. He submitted that the land was acquired for the purpose of Narmada Canal and the land acquired for the other nearby villages like Shiyapura or Vidaj, the Reference Court had awarded Rs.28/- per sq. meter and the First Appeal Nos. 2802 of 2001 to 2817 of 2001 were preferred against the judgment and award of the Reference Court in respect of the land acquired of village Shiyapura in Land Acquisition Reference Nos. 23 of 1999 to 38 of 1999. Similarly, First Appeal No.1088 of 2000 to 1097 of 2000 was preferred before the High Court challenging the judgment and order of the Reference Court awarding the compensation of Rs.28/- per sq. meter in respect of the land acquired of village Vidaj, Taluka

Kadi in Land Acquisition Reference No.1 of 1999 to 4 of 1999 and 505 of 1999 to 510 of 1999 for the same project of Narmada Canal. Therefore, learned AGP Mr. Ronak Raval submitted that the amount has been reduced after considering all the relevant aspects, and the land of village Manipur is not similarly situated, which has not been considered. He submitted that even in those cases, which have been referred, the High Court has reduced the amount of compensation from Rs.28/- per sq. meter to Rs.26/- per sq. meter, and therefore, in the present case also the amount of Rs.28/- per sq. meter is on higher side, and the award makes it clear that the compensation has already been awarded by the Special Land Acquisition Officer is Rs.3/- minus the additional compensation of Rs.28/- per sq. meter, would come to Rs.25/- per sq. meter as additional compensation, which is on higher side. Learned AGP has also stated that atleast the interest which has been ordered to be paid @ 9% per annum from the date of taking the possession for the first year and thereafter @ 15% per annum till realization of the payable amount, is much higher, when the rates of the Banks and even in other such cases, the interest has not been awarded @ 15%.

5. Learned Advocate Mr. Jayesh Patel for the Respondents – Original Claimants also referred to the judgment of the High Court of Gujarat rendered in First Appeal Nos. 2802 of 2000 to 2817 of 2000 challenging the judgment judgment and award of

the Reference Court in LAR No. 23 of 1999 to 38 of 1999 in case of village Shiyapura. Learned Advocate Shri Patel submitted that the Reference Court has relied upon Exh.20, which is an earlier award and the said award was in respect of the land acquired from village Vidaj for the same purpose. Learned Advocate, therefore submitted that the High Court had considered the valuation at Rs.28/- per sq. meter, and considering the earlier judgment in two groups of First Appeal Nos. 1088 of 2000 to 1097 of 2000 and First Appeal Nos. 3303 of 2000 to 3310 of 2000, it had reduced the market value and the compensation of Rs.22.60p. He therefore submitted that in the facts of the case though the amount awarded is Rs.28/- per sq. meter after deducting Rs.3/- awarded by the Reference Court comes to Rs.25/- per sq. meter. He has also submitted that no amount has been deposited and the claimants have not got any amount, and therefore, the interest which has been awarded is just and proper.

6. In view of this rival submissions, it is required to be considered whether the present First Appeals can be entertained or not.

7. For the purpose of deciding the present Appeals, the first point for consideration would be whether the approach of the Reference Court in awarding additional compensation at Rs.28/- per sq. meter can be said to be just and proper. Second whether the Reference Court has considered the relevant criteria like the annual yield of the lands, the prospects of

development and the actual development of the land in surrounding areas. Third, the prospect of future or the potential development, and fourth, the comparable instances with regard to the sale transactions for considering the market value or the price of the land. It also requires to be considered whether the impugned judgment and order calls for any interference.

8. From the material and evidence on record, and the rival submissions, which have been recorded hereinabove as well as the impugned judgment of the Reference Court, it is evident that the Reference Court has referred to such criteria with regard to the assessment of the compensation and arriving at the market value and the different methods of arriving at the market value of the land based on the yield or the market value of the surrounding land in the near vicinity. The Reference Court has therefore placed reliance on the previous award at Exh.20 and stated that whether this award passed by the Reference Court (Exh.20) in respect of the other land has been challenged or not, is not known. Therefore, learned Advocate Shri Patel has placed reliance on the said award. However, as could be seen from the record, it is not disputed by both the sides that against the said award at Exh.20 by the Reference Court, First Appeal Nos. 2802 of 2000 to 2817 of 2000 were preferred and the Division Bench of the High Court referring to the earlier group of matters being First Appeal Nos. 1088 of 2000 to 1097 of 2000 and First Appeal No. 3303 of 2000 to

3310 of 2000 passed an order that instead of Rs.28/- per sq. meter, the market value should be taken as Rs.26.60 paise. Therefore, this aspect has not been brought to the notice of the Reference Court, it would have otherwise considered the same. Therefore, when both the sides conceived that in respect of the nearby village, the land acquired for the same purpose of Narmada Canal, the High Court in the group of First Appeals referred to hereinabove has reduced the compensation from Rs. 28/- to Rs.26.60, the same should also be followed or accepted as a guideline, as, earlier the Division Bench has decided the same considering all the criteria. It is in these circumstances, the submission made by learned AGP Shri Ronak Raval that the compensation of Rs.28/- per sq. meter should be Rs.26.60 per sq. meter is required to be accepted. Again, from this amount Rs.3/- per sq. meter awarded by the Land Acquisition Officer is required to be deducted, and therefore, the respective claimants would be entitled to the additional compensation at Rs.23.60 rounded of to Rs.23.50/-.

9. Further, the main contention which has been raised by learned AGP with regard to the rate of interest also required to be considered. The Reference Court has passed the award awarding the interest @ 9% per annum from the date of possession from the date of Notification under Section 4 of the Act whichever is earlier for the first year and thereafter @ 15% till realization, which is on higher side. The Court has to

consider the trend in the Banking rates based on the economic trend. The rate of interest were not 15% and in any case 15% would be much higher, and therefore, it has to be substituted at 9% per annum. Therefore, the award is also required to be accordingly modified for the rate of interest at 9% instead of 15% per annum from the date of the award till realization.

10. Therefore, the present First Appeals deserve to be allowed partly to the aforesaid extent. The Respondents – Claimants are entitled to additional compensation at Rs.23.50 per sq. meter (Rs.26.60 minus Rs.3/- already awarded – rounded of to Rs.23.50) along with interest @ 9% from the date of the award till realization as recorded in the award and would also be entitled to the interest @ 9% for the period prior thereto, I.e. the date of Notification under Section 4 and / or possession, whichever is earlier. The First Appeals accordingly stand allowed.

11. The registry is directed to send R&P to the Reference Court at the earliest. It is clarified that the Respondents – Original Claimants will be entitled to all the statutory allowance permissible on the market value as determined by this Court at Rs.26.50 per sq. meter as awarded by this Court.

(Rajesh H. Shukla,J)

Jayanti*